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Let the Agent Beware: Wilkinson v. Sweeny and Undisclosed Corporate Status

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NOTES

Let the Agent Beware: *Wilkinson v. Sweeny* and Undisclosed Corporate Status

Introduction

Applying the doctrine of undisclosed agency, the third circuit in *Wilkinson v. Sweeney*[1] held the president of a closely held corporation personally liable for a corporate debt due to his failure to adequately disclose the corporate status of his business. Notwithstanding the propriety of the use of the undisclosed agency doctrine in Louisiana,[2] this

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1. 532 So. 2d 243 (La. App. 3d Cir.), writ denied, 534 So. 2d 447 (1988).

2. Louisiana Civil Code articles 3012 and 3013 were cited as authority for undisclosed agency in Louisiana by the *Wilkinson* court. This is consistent with prior jurisprudence. The articles read literally, however, do not speak of undisclosed agency. The articles do speak of the liability of a mandatary when he has acted beyond the scope of his authority. La. Civ. Code art. 3012 provides: "The mandatary, who has communicated his authority to a person with whom he contracts in that capacity, is not answerable to the latter for anything done beyond it, unless he has entered into a personal guarantee." The article may, however, by negative implication state that when the authority is not communicated, the mandatary will be answerable. This interpretation may be going beyond the scope of the article because its title, "Acts beyond power with third person informed of authority," may indicate that its emphasis is on actions done beyond the scope of the mandatary's authority, and the subsequent liability when the agent did not inform the third person about the limit of his authority. La. Civ. Code art. 3013 provides: "The mandatary is responsible to those with whom he contracts, only when he has bound himself personally, or when he has exceeded his authority without having exhibited his powers." Again, the literal reading of the article discusses the mandatary's liability when he acts beyond the scope of his authority. Regardless of this exercise in statutory interpretation, undisclosed agency has been jurisprudentially accepted. In Chappuis & Chappuis v. Kaplan, 170 La. 763, 129 So. 156 (1930), the supreme court held that one acting for an undisclosed principal is personally liable. And in Sentell v. Richardson, 211 La. 288, 29 So. 2d 852 (1947), the court again used an undisclosed agency analysis in rendering its decision. In *Sentell*, La. Civ. Code art. 2985 was at issue. Article 2985 provides that a mandate is an act by which one gives another the power to transact for him and in his name. The "in his name" language should preclude the application of the undisclosed agency doctrine. The court realized this and reasoned that if this language was essential, there would be no undisclosed agency. It was concluded that the language was not essential and it was ignored.

For an example of a decision that acknowledged that undisclosed agency is not recognized by the Civil Code, see Teachers' Retirement Sys. v. La. State Employees Retirement Sys., 444 So. 2d 193, 196 (La. App. 1st Cir. 1983), rev'd on other grounds,

decision rested on questionable statutory authority. Although many issues were raised in this case, the scope of this note will be limited to a discussion of the duty incumbent on an agent to disclose his representative capacity, and more importantly, the standard by which his actions will be judged by the courts. Whether or not this case is an isolated incident remains to be seen, but as it now stands, it is a decision that should concern agents, shareholders, and officers who transact business for their corporation.

Facts of Wilkinson v. Sweeny

Sweeny, shareholder and president of Suntans Unlimited, Inc., entered into negotiations with Wilkinson concerning the lease of office space for a new business that Sweeny was in the process of starting. Sweeny testified at trial that he had disclosed the corporate status of the business to Wilkinson and that he had introduced his wife to Wilkinson as the secretary of the corporation. Sweeny also introduced other business associates as officers. The vice-president of Suntans Unlimited testified that he was introduced to Wilkinson as such; however, he could not recall if the status of the business was discussed at that time. Prior to signing the lease, Sweeny gave Wilkinson a security deposit drawn on the checking account of "Suntans Unlimited, Inc."

Four days after the security deposit was given, Sweeny executed the lease, but the signature line for Suntans Unlimited did not include a reference to its corporate status. During the lease period, checks drawn on the account of "Suntans Unlimited, Inc." were paid monthly to Wilkinson. Almost a year after the execution of the lease, Suntans Unlimited declared bankruptcy and Wilkinson filed suit against Sweeny for the unpaid corporate debts totalling $874.81. Sweeny defended the suit arguing that the corporation alone should be liable for the debt. Wilkinson alleged that Suntans Unlimited's status as a corporation was not disclosed, and Sweeny, acting as agent, should be held personally liable.

The trial court denied Wilkinson's claim and he appealed. The court of appeal reversed, holding Sweeny liable for the debts of Suntans Unlimited. The court stated that Sweeny had an affirmative duty to disclose his agency status so as to put Wilkinson on notice that he was dealing with a corporation, and he failed to prove that he had satisfied this duty.

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456 So. 2d 594 (1984) (reversal based on procedural error). See also Comment, Juridical Basis of Principal—Third Party Liability in Louisiana Undisclosed Agency Cases, 8 La. L. Rev. 409 (1948) for a discussion of French law as it relates to the liability between the principal and third party. For the purposes of this paper, it will be assumed that the doctrine of undisclosed agency is properly applied in Louisiana.

Preliminary Analysis of Decision

The doctrine of undisclosed agency mandates that to avoid personal liability the agent must (1) disclose that he is an agent, and (2) disclose the identity of his principal.[3] As one might expect, the inquiry into the adequacy of disclosure of corporate status is often fact intensive.

In *Wilkinson*, the facts suggest that there was disclosure of both the agency relationship as well as the identity of the principal. The signature line on the lease was written "Suntans Unlimited, By: . . . ."[4] This signature could easily have been interpreted as disclosure of both the identity of the principal and the representative capacity of the agent. The existence of Suntans Unlimited was disclosed, and the signature indicated that Sweeny signed on behalf of the business. Furthermore, there was no space for Sweeny to sign in an individual capacity. These facts were held insufficient, however, because there was no "Inc." after the name of the company, which would have indicated on the lease agreement that Suntans Unlimited was a corporation.

The third circuit's application of the undisclosed agency doctrine to determine the adequacy of disclosure of corporate status in *Wilkinson* was not a novel use of the doctrine. In many Louisiana cases, the adequacy of disclosure issue often turns on disclosure of corporate status rather than disclosure of representative capacity or identity of principal. The facts of the case may give the appearance that the agent did disclose his agency status and the principal's identity, but the agent was nevertheless held personally liable because of a seemingly insignificant failure to expressly mention the corporate status.

One reason for such a result may be a policy based on equity. A court may be faced with a situation where one party clearly benefits at another party's expense. Instead of allowing the party to hide behind his corporate shield, the court imposes liability on the agent. The undisclosed agency doctrine provides an alternative that allows a court to circumvent the problems associated with "piercing the corporate veil," while at the same time shifting the loss to the party who benefited from the contract. Whether or not this should be a proper application of the doctrine is debatable, but it may explain a tendency exhibited by some courts in holding that satisfactory disclosure has not been made.

Statutory Authority Cited in the Decision

The relevant statutory authority cited in the decision was Louisiana Revised Statutes 12:23(A),[5] which provides in part, "The corporate name

3. Restatement (Second) of Agency §§ 320-322 (1958); *Wilkinson*, 532 So. 2d at 245; 3 Am. Jur. 2d Agency § 325 (1986).

4. *Wilkinson*, 532 So. 2d at 244.

5. Aside from the Civil Code articles previously mentioned, the court cited provisions

. . . shall contain the word 'Corporation', 'Incorporated' or 'Limited', or the abbreviation of any of those words." Although the statute requires that the business name include the reference to corporate status, this section of Title 12 pertains to the filing requirements of a corporation, not to the use of trade names. The court's discussion of this statute was primarily concerned with a sign in front of the business which did not contain any indication of the corporate status of Suntans Unlimited, Inc. Presumably, the court used the statute to bolster its decision; however, the statute neither applies to the facts of the case, nor is it relevant since the business did not occupy the space when the parties executed the lease.

If the court's reliance on Louisiana Revised Statutes 12:23(A) was well-founded, then the use of a trade name without a reference to corporate status would create *per se* exposure to personal liability for employees of businesses that operate solely under a trade name. Using the court's questionable reasoning, if sales clerks in stores do not disclose the corporate status of the business, they may be held personally liable if the sign in front of the store does not contain a reference to its corporate identity. Such a result is highly undesirable and was probably not contemplated by the court in rendering its decision.

The Agent's Duty of Disclosure

As has been stated, to avoid personal liability an agent must disclose that he is acting as an agent and disclose the identity of his principal. If the principal is a corporation, the agent must disclose the corporate status of the principal. The use of an undisclosed agency analysis in situations involving disclosure of corporate status is common in Louisiana courts.

The agent's duty is not discharged by merely using a trade name.[6] Even if the trade name is clearly distinguishable from that of the agent, the use of the trade name without further indication of corporate status is not sufficient to discharge the agent's duty of disclosure.[7] If one were to use the rationale of *Wilkinson* and its reliance on the language of Louisiana Revised Statutes 12:23(A), the agent would have to use one

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from Title 12. The provisions La. R.S. 12:23(A), discussed in the text, and La. R.S. 12:82-12:95 were cited. The section covered under La. R.S. 12:82 has nothing to do with the issue of disclosure of agency status. It pertains to the authorization of agents and officers as described in the by-laws of the corporation. La. R.S. 12:23(A) provides: "The corporate name . . . shall contain the word 'Corporation,' 'Incorporated' or 'Limited,' or the abbreviation of any of those words . . ."; La. R.S. 12:23 is contained in Part II of Title 12 pertaining to the filing requirements of a newly formed corporation.

6. Transport Refrigeration of La., Inc. v. D'Antoni, 281 So. 2d 469 (La. App. 4th Cir. 1973).

7. Id.

of the following words: Corporation, Incorporated, Limited, Company, or their abbreviations. It is unfortunate that Sweeny named the corporation "Suntans Unlimited" rather than "Suntans Limited".

Important Factors and the Jurisprudence

Trade Names

Under agency law, a party claiming immunity from personal liability has the burden of proving the existence of the agency relationship.[8] Notwithstanding contracts affecting immovable interests,[9] parol evidence has generally been admissible in attempts by agents to prove the disclosure of their agency status.[10] Inasmuch as the adequacy of disclosure is a question of fact, the following cases reveal some of the factors which may influence a court.

The use of a trade name is a common defense to allegations based on undisclosed agency. This contention, however, has been consistently rejected. In *Transport Refrigeration of Louisiana, Inc. v. D'Antoni*,[11] the defendant operated several businesses, two of which dealt with the plaintiff. In fact, the plaintiff and defendant were located at the same address. A work order showed that repairs were made by the plaintiff on a truck owned by one of the defendant's businesses, Deep South Transport. Deep South owned the trucks but they were leased to another of the defendant's companies, D'Antoni Motor Lines, Inc. When the defendant ordered the repairs, he did not tell the plaintiff that Deep South was a corporation. Deep South eventually went out of business. The court held the defendant personally liable for the repair bill because there was insufficient disclosure of the corporate status of Deep South. Even though the defendant used the trade name, and the plaintiff was familiar with the company, the court stated that:

> [T]he mere use of a trade name is not necessarily a sufficient disclosure by the individual that he is in fact contracting on

8. Marmedic, Inc. v. International Ship Management & Agency Serv., Inc., 425 So. 2d 878 (La. App. 4th Cir. 1983).

9. For example, La. Civ. Code art. 2440 requires that the transfer of an immovable be in writing. Likewise, an agency agreement used in conjunction with the transfer must also be in writing. If an undisclosed agency issue existed, the introduction of parol evidence may meet resistance. No cases on the subject were located.

10. See American Bank and Trust Co. of Houma v. Wetland Workover, 523 So. 2d 942, 945-46 (La. App. 4th Cir.), writ denied, 531 So. 2d 282 (1988); and Marmedic, Inc. v. Int'l Ship Management and Agency Serv., Inc., 425 So. 2d 878 (La. App. 4th Cir. 1983).

11. 281 So. 2d 469 (La. App. 4th Cir. 1973).

> behalf of a corporation so as to protect him against personal liability. The facts and circumstances of each case determine whether or not the individual sufficiently disclosed that he was acting in a representative capacity so as to alert the other contracting party that the contract was with a corporation.[12]

Trade names have been treated similarly throughout Louisiana jurisprudence, as well as in other jurisdictions.[13]

Checks, Stationary, Invoices, etc.

Many situations exist where, in addition to the use of a trade name, a defendant attempts to prove disclosure by introducing evidence in the form of checks, stationary, invoices, etc. which on their face include a notation of the corporate status of the business. In *Wilkinson*, the defendant made lease payments with checks drawn on the account of "Suntans Unlimited, Inc."[14] The security deposit check, given to the plaintiff several days before the execution of the lease, was likewise drawn on the account of "Suntans Unlimited, Inc." The court, however, discredited this evidence of disclosure by placing undue emphasis on the addresses printed on the checks. Presumably some of the checks used were printed prior to the lease and contained an address different from that of the leased premises. The court commented that "[a]t best, these checks prove that for at least half of the lease term a corporation at another location paid the monthly rent for the . . . office space leased from plaintiff."[15] Why this statement was relevant to the issue of disclosure is unclear. It is, however, evident from this language that the court had a strong desire to discount this evidence of disclosure by implying that a different corporation with the same name as that of the defendant's may have been making the lease payments. Even though the court's analysis concerning the checks is less than persuasive, the result reached is generally consistent with prior decisions.[16]

Another example of the insignificance courts attach to checks is found in *Martin Home Center, Inc. v. Stafford*.[17] In this decision, also from the third circuit, a corporate agent was held personally liable for

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12. Id. at 471.

13. Wynne v. Adcock Pipe and Supply, 761 S.W.2d 67 (Tex. Ct. App. 1988).

14. *Wilkinson*, 532 So. 2d at 244.

15. Id. at 247.

16. See generally Eastin v. Ramey, 257 So. 2d 717 (La. App. 3d Cir. 1972) (letterheads, checks and telephone directory listing); Prevost v. Gomez, 251 So. 2d 470 (La. App. 1st Cir. 1971) (stationary invoices, bank checks and newspaper advertisements); Darr v. Kinchen, 176 So. 2d 638 (La. App. 1st Cir.), writ refused, 248 La. 386, 178 So. 2d 664 (1965) (checks); Wilson v. McNabb, 157 So. 2d 897 (La. App. 1st Cir. 1963) (checks).

17. 434 So. 2d 673 (La. App. 3d Cir. 1983).

the purchase of building supplies from the plaintiff. The defendant introduced into evidence cancelled checks and a purchase order written on stationary bearing the corporate name of the defendant's business, New Creations Enterprises, Inc. The court's attitude toward the evidence was clearly expressed when it stated:

> These documents, plus the self-serving testimony of [defendant], are the only items of evidence showing that [defendants] disclosed their agency relationship.
>
> We do not feel that [defendants] proved that express notification was given to plaintiff of their agency relationship. Nor do we feel that the isolated references to the corporate status of New Creations Enterprises in the document presented give rise to facts and circumstances which demonstrate affirmatively that plaintiff was aware of the agency relationship.[18]

Louisiana courts, as well as other state courts, often accord documentary evidence little weight in reaching decisions.[19]

Conversely, in certain circumstances the notation on a check is a relevant factor. In *You'll See Seafoods, Inc. v. Gravois*,[20] the agent being sued had purchased large quantities of seafood from the plaintiff. The plaintiff alleged that the agent never disclosed that he was acting for a corporation. The agent signed corporate checks to pay for the debt, but the checks did not indicate that the purchasing company was a corporation. This omission was specifically noted by the court, which held the agent personally liable in its subsequent decision.

Clearly, a defendant has a difficult task in proving he gave the plaintiff notice that the business was incorporated. This burden is even more troublesome because of the nature of the transaction involved. Often when contracts are formed, the parties involved do not anticipate and provide for any problems with payment. The thought of disclosing that the businesses involved are corporations may not even be considered. This is especially true of small, closely-held corporations where the owners may not even be aware that "undisclosed agency" exists. In an ideal setting, these problems could be avoided in the planning stage of the business by instructing agents to explicitly disclose that the business is a corporation. But in most situations, the owners find out about the problem when it is too late—after a suit has been filed.

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18. Id. at 674.

19. Tarolli Lumber Co., Inc. v. Andreassi, 59 A.D.2d 1011, 399 N.Y.S.2d 739 (N.Y. App. Div. 1977).

20. 520 So. 2d 461, 462 (La. App. 5th Cir.), writ denied, 523 So. 2d 218 (1988).

Objective or Subjective Standard of Review

Authority exists for the proposition that express notification of corporate status is not required.[21] The reasoning indicates that the defendant can rely on "constructive notice" to prove disclosure. In the absence of direct disclosure, one court has specifically allowed the defendant to use circumstantial or "constructive notice" to prove that the duty of disclosure was discharged.[22] Although a standard of what constitutes "constructive notice" has not been defined in cases concerning undisclosed agency issues, courts primarily use a "reasonable man" standard, that is, what a "reasonable man should have known."[23] Alternatively, some courts have required that the defendant show the plaintiff had actual knowledge he was contracting with a corporate agent. This type of standard is more subjective and requires actual instead of constructive disclosure of the corporate status.

Objective Standard

The basic inquiry involved in the objective standard is whether a reasonable person in the place of the plaintiff knew or should have known that he was dealing with an agent of a corporation. The language a court uses in rendering its decision can indicate the type of standard applied to the evidence.

In *Chartres Corp. v. Twilbeck*,[24] the court's review of documentary evidence resulted in a decision holding the agent personally liable. In the evaluation, the court stated that "plaintiff was not aware nor should have been aware that [defendant] acted in any capacity other than as an individual."[25] The "should have been aware" test is indicative of an objective standard applied to the evidence. It can likewise be inferred that if the defendant had proven that the plaintiff should have been aware of the agency relationship, personal liability on the contract could have been avoided.

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21. See infra text accompanying notes 26-28 regarding J. T. Doiron v. Lundin.

22. See Robin Seafood Co., Inc. v. Duggar, 485 So. 2d 593 (La. App. 4th Cir. 1986), where the court stated that defendant presented no evidence of direct disclosure of his corporate status so he had to depend on circumstantial evidence supporting constructive knowledge by plaintiff of defendant's true status.

23. Constructive notice is defined in Black's Law Dictionary 284 (5th ed. 1979) as: "Such notice as is implied or imputed by law . . . . Notice with which a person is charged by reason of the notorious nature of the thing to be noticed, as contrasted with actual notice of such thing." See also Brown v. Winn-Dixie Louisiana, Inc., 452 So. 2d 685 (La. 1984), where the court speaks of "constructive notice" in the context of a tort issue and a "should have known" type standard.

24. 305 So. 2d 730 (La. App. 4th Cir. 1974).

25. Id. at 732.

The problem of the sufficiency of disclosure was specifically noted in *J. T. Doiron, Inc. v. Lundin*,[26] where the court recognized that this issue has been the turning point in some cases. The defendant owned property which was appraised by the plaintiff, but the appraisal fees were never paid. Preliminary discussions between plaintiff and defendant took place at the defendant's corporate offices where signs indicating the corporate status were displayed. One of the two pieces of property being appraised was assessed in the corporate name of Tasco, Inc. Concluding that the defendant never actually told the plaintiff he was acting as Tasco's agent, the trial court nevertheless felt there was sufficient evidence to conclude that, "plaintiff, as a businessman, knew or should have known that defendant was an officer of Tasco, Inc., and that the request for an appraisal was made in the name of the corporation and not at defendant's personal instance."[27] This result was affirmed on appeal, and the first circuit added,

> Express notice of the agent's status and the principal's identity is unnecessary if facts and circumstances surrounding the transaction, combined with the general knowledge that persons in that type of business are usually acting as agents, demonstrate affirmatively that the third person should be charged with notice of the relationship.[28]

Arguably, if an objective standard had been applied to the evidence presented in *Wilkinson*, Sweeny would have been absolved from personal liability. Reasonableness is a question of fact, and the trial judge in *Wilkinson* acting as the trier of fact concluded that Sweeny should not be held liable. On appeal, the third circuit acknowledged that the findings of the trial court should be given great weight.[29] Nevertheless, the appellate court in this case concluded that the trial court did not state what law was applied and no factual determinations or conclusions were made.[30] Presumably the appellate court was left free to determine the facts on its own volition because of the absence of facts and the "possibility of tainted factual conclusions" based on an assumed incorrect determination of the legal issues.[31]

The reliance by the appellate court in *Wilkinson* on the failure to include "Inc." on the signature line of the lease, together with the insignificance attached to the other evidence presented, indicates that a

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26. 385 So. 2d 450 (La. App. 1st Cir. 1980).

27. Id. at 452.

28. Id. at 453.

29. *Wilkinson*, 532 So. 2d at 245, citing Arceneaux v. Domingue, 365 So. 2d 1330 (La. 1978) and Canter v. Koehring Co., 283 So. 2d 716 (La. 1973).

30. *Wilkinson*, 532 So. 2d at 245.

31. Id.

more subjective test was applied to the facts in *Wilkinson*. The application of a subjective test creates a more difficult burden for the defendant to prove disclosure.

Subjective Standard

The subjective standard requires that an agent give actual or express notification to the party that he is in fact dealing with an agent. The related issue of disclosure of corporate status involves a subjective standard where actual notice of corporate status must be given to the third person. Compared to the objective standard, this standard creates an almost impossible burden on the defendant absent judicial confession or inclusion of the corporate reference on a written contract to prove the actual knowledge of the plaintiff.

Even though many recent decisions apply an objective standard, there are instances in cases where elements of a more subjective standard have been applied. One such case is *Three Rivers Hardwood Lumber Co., Inc. v. Gibson*,[32] where the defendant was an agent purchasing material on an open account for a corporation. When the defendant applied for credit from the plaintiff supplier, he did not indicate that the credit was for the corporation he represented. The representations made to the plaintiff indicated the credit was for the defendant individually. All the invoices were sent to defendant. The second circuit used what appeared to be a subjective standard by stating, "[A]ctual knowledge is necessary, and it is not sufficient that the third person has knowledge of facts and circumstances which would, if reasonably followed by inquiry, disclose the identity of the principal."[33] If the court had said nothing further, it would appear that a subjective standard had been applied. The court, however, complicated the matter by further stating, "An express notice of agency and the identity of the principal is not necessary, however, if the third person may be charged with notice by reason of the attendant circumstances . . . ."[34] Even though it is not clear what standard was eventually used in this case, it is one of the few examples in the Louisiana jurisprudence where a more subjective than objective standard was applied.

Although no Louisiana decisions exist where the court has unambiguously applied a purely subjective standard, there are examples from other jurisdictions where such a standard has been applied. In *Anderson v. Smith*, a Texas court addressing the adequacy of an agent's alleged

32. 181 So. 607 (La. App. 2d Cir. 1938).
33. Id. at 609.
34. Id.

disclosure of corporate status stated that, "[k]nowledge of the real principal is the test, and this means actual knowledge, not suspicion."[35] The court further stated:

> It is not sufficient that the seller may have the means of ascertaining the name of the principal . . . . He must have actual knowledge. There is no hardship in the rule of liability against agents. They always have it in their power to relieve themselves, and when they do not, it must be presumed that they intend to be liable.[36]

The reason for concern after *Wilkinson* is the direction the court may have taken in evaluating the evidence. The importance placed on the failure to note "Inc." on the lease, coupled with the discussion of the sign in front of the business, leads to the conclusion that the court was looking for actual notification as opposed to constructive notification. The decision even referred to Sweeny's failure to show the plaintiff the corporate charter and corporate resolution authorizing him to rent the office space.[37]

Conclusion

Absent a clear message from the Louisiana Supreme Court regarding the standard to be applied in judging the sufficiency of disclosure, it is apparent that appellate courts can exercise their own discretion in determining what standard to apply to the facts of the case. There is merit to the argument that an objective standard should be applied because in the ordinary course of business, parties to a contract should be expected to act in a reasonable manner. Courts should likewise expect the party with whom an agent is contracting to act in a reasonable manner and to be cognizant of the factors involved in their transaction. It may be unfair to penalize an agent who acts reasonably by imposing a duty of actual disclosure when the party with whom he is contracting should certainly have known that the agent did not intend to be personally bound in the contract.

Apart from the standard of review issue, the current state of the law with respect to disclosure of corporate status can be summarized in the following fashion: The party representing a corporation must sufficiently discharge his duty of disclosure of the corporate status in order to avoid personal liability on the contract. When the adequacy of disclosure is disputed, the agent has the burden of proving that he gave sufficient notice to the party with whom he was contracting. When

35. 398 S.W.2d 635, 637 (Tex. Ct. App. 1965).
36. Id.
37. *Wilkinson*, 532 So. 2d at 246.

the primary evidentiary instrument, e.g. a lease or written contract, is devoid of any express notification of agency or corporate status, the agent may attempt to prove the disclosure by offering testimony and other circumstantial evidence. If the court believes that the other person knew or should have known that the agent was not acting in an individual capacity, the agent is relieved of personal liability. While there may be some authority to dispute the application of an objective standard to the facts, the majority of the cases are applying an objective test to determine if the person contracting with the agent knew of the corporate status of the principal.

Until a clear standard of review is established in favor of an objective test, the possibility exists for the requirement of actual disclosure. The owner of a small, closely-held corporation would be well advised to give express notice of the corporate status of the business. The failure to include three letters, "Inc.", can negate any limitation in liability, which is often the primary reason for incorporating.

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